MONTANA LEGISLATIVE HISTORY

Chapter 260 ~~19~~ 2001

Bill H 261 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-14	✓ C	Hearing Date(s)	3-16	✓ C
	2-15	✓ C		3-23	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Bill Type - Number: HB 261

Short Title: Illegal operation of clandestine dangerous drugs lab

Primary Sponsor: Larry Jent

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 50

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/19/2001			
(H) Signed by Governor	04/19/2001			
(H) Transmitted to Governor	04/17/2001			
(S) Signed by President	04/17/2001			
(H) Signed by Speaker	04/17/2001			
(C) Sent to Printing	04/17/2001			
(H) Returned from Enrolling	04/16/2001			
(H) Sent to Enrolling	04/13/2001			
(H) 3rd Reading Passed as Amended by Senate	04/13/2001	98	2	
(H) Scheduled for 3rd Reading	04/13/2001			
(H) 2nd Reading Senate Amendments Concurred	04/12/2001	99	1	
(H) Scheduled for 2nd Reading	04/12/2001			
(S) Returned to House with Amendments	03/28/2001			
(S) 3rd Reading Concurred	03/28/2001	48	0	
(S) Scheduled for 3rd Reading	03/28/2001			
(S) 2nd Reading Concurred on Voice Vote	03/27/2001	48	0	
(S) Scheduled for 2nd Reading	03/27/2001			
(C) Sent to Printing	03/24/2001			
(S) Committee Report--Bill Concurred as Amended	03/24/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred as Amended	03/24/2001	8	0	(S) Judiciary
(S) Hearing	03/16/2001			(S) Judiciary
(S) Referred to Committee	02/28/2001			(S) Judiciary
(S) First Reading	02/28/2001			
(H) Transmitted to Senate	02/21/2001			
(H) 3rd Reading Passed	02/21/2001	99	1	
(H) Scheduled for 3rd Reading	02/21/2001			
(H) 2nd Reading Passed	02/20/2001	99	0	

(H) Scheduled for 2nd Reading	02/20/2001			
(C) Sent to Printing	02/16/2001			
(H) Committee Report--Bill Passed as Amended	02/16/2001			(H) Judiciary
(H) Committee Executive Action--Bill Passed as Amended	02/16/2001	18	2	(H) Judiciary
(H) Hearing	02/14/2001			(H) Judiciary
(C) Introduced Bill Text Available Electronically	01/11/2001			
(H) Referred to Committee	01/11/2001			(H) Judiciary
(H) First Reading	01/11/2001			
(H) Introduced	01/11/2001			
(C) Draft Delivered to Requester	01/08/2001			
(C) Draft Ready for Delivery	01/05/2001			
(C) Draft in Assembly/Executive Director Review	01/04/2001			
(C) Draft in Final Drafter Review	01/04/2001			
(C) Bill Draft Text Available Electronically	01/04/2001			
(C) Draft in Input/Proofing	01/04/2001			
(C) Draft to Drafter - Edit Review [CMD]	01/04/2001			
(C) Draft in Edit	01/03/2001			
(C) Draft in Legal Review	01/03/2001			
(C) Draft Back for Requester Changes	01/03/2001			
(C) Draft to Requester for Review	12/23/2000			
(C) Draft Taken Off Hold	12/19/2000			
(C) Draft On Hold	12/12/2000			
(C) Draft Request Received	12/05/2000			

HOUSE BILL NO. 261

INTRODUCED BY L. JENT

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY FOR THE CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 and 2], the following definitions apply:

(1) "Booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. "Booby trap" includes:

(a) guns, ammunition, or explosive devices that are attached to trip wires or other triggering mechanisms;

(b) sharpened stakes, nails, spikes, electrical devices, lines, or wires with hooks attached; and

(c) devices for the production of toxic fumes or gases.

(2) "Clandestine laboratory operation" means:

(a) the procurement, possession, or use of chemicals, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(b) the transportation of or arranging for the transportation of chemicals, supplies, or equipment for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(c) the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110; or

(d) the distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110.

(3) "Disposal" means abandoning, discharging, depositing, injecting, dumping, spilling, leaking, or placing any hazardous or dangerous material into or on any property, land, or water so that the material may enter the environment, be emitted into the air, or be discharged into any waters, including ground water.

(4) "Equipment" or "laboratory equipment" means all products, components, or materials of any kind when used, intended for use, or designed for use in the manufacture, preparation, production, compounding, conversion, or processing of a dangerous drug as defined in 50-32-101. "Equipment" or "laboratory equipment"

includes but is not limited to:

(a) a reaction vessel;

(b) a separatory funnel or its equivalent;

(c) a glass condensor;

(d) an analytical balance or scale; or

(e) a heating mantle or other heat source.

(5) "Hazardous or dangerous material" means any substance that because of its quantity, concentration, physical characteristics, or chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise improperly managed.

(6) "Precursor to dangerous drugs" means any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1), except as exempted by 45-9-108.

NEW SECTION. **Section 2. Operation of unlawful clandestine laboratory -- penalties.** (1) A person commits the offense of operation of an unlawful clandestine laboratory if the person purposely or knowingly:

(a) possesses any precursor to dangerous drugs with the intent to engage in a clandestine laboratory operation;

(b) possesses laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;

(c) sells, distributes, or otherwise provides to any person any precursor to dangerous drugs, laboratory equipment, or laboratory supplies knowing they will be used for a clandestine laboratory operation.

(2) Except as provided in subsections (3) and (4), a person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $25,000, be imprisoned in a state prison for a term not to exceed 20 years, or both.

(3) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $50,000, be imprisoned in a state prison for a term not to exceed 25 years, or both, if the judge or jury finds that the operation of an unlawful clandestine laboratory or any phase of the operation:

(a) created a substantial risk to human health or safety or a danger to the environment;

(b) took place within 500 feet of a residence, business, church, or school; or

(c) took place in the presence of a person less than 18 years of age.

(4) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not

to exceed $100,000, be imprisoned in a state prison for a term not to exceed 40 years, or both, if the judge or jury finds that the operation of an unlawful clandestine laboratory or any phase of the operation involved the use of a firearm or booby trap.

NEW SECTION. **Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45, chapter 9, part 1, apply to [sections 1 and 2].

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2001.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 14, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 261 - 2-12-01**
HB 545 - 2-12-01

HB 546 - 2-12-01
HB 521 - 2-12-01

Executive Action:
HB 254 - DPAA
HB 419 - DPAA
HB 521 - DP
HB 545 - Table
HB 546 - Table

HEARING ON HB 261

Sponsor: **Rep. Larry Jent, HD 29, Bozeman said** this Bill is directed toward the drug methamphetamine. This is the worst drug of all the illegal drugs. There have been many cases in federal courts and every methamphetamine case he has been involved in, there has been a murder. The reason is, this drug is a highly addictive drug, a drug that causes people to be hyperactive. They become paranoid, start hallucinating and then carry guns.

The cooking of methamphetamine is extremely toxic. It takes specially trained drug officers to clean up a methamphetamine lab because they need the special training, equipment and the necessary precautions. It can cost thousands of dollars to clean up a lab. It is illegal to possess, sell or possess precursors of methamphetamine which include the chemicals that make up the drug. Between the possession of the precursors and the in-product, there is the drug lab.

The Bill seeks to create a new crime of having the lab. This is not a Bill that seeks to criminalize the possession of flasks, beakers and condensers because in the Bill the requirement or the intent is to actually make the product.

The Bill provides penalties for possessing the precursors with the intent to set up a lab, possessing the equipment with the intent, or selling the makings of a lab. It provides for a penalty of 20 years not to exceed 25 years if there is a substantial risk to safety, or within 500 feet of a business, residence or church, or there is a juvenile present, or a firearm or booby trap.

EXHIBIT(juh37a01) EXHIBIT(juh37a02)

Proponents: **Joe Thaggart, Assistant Attorney General, Montana Department of Justice.**

Jim Hutchison, Forensic Toxicologist, Lab Supervisor, Crime Lab.

Mike Batista, Administrator, Division of Criminal Investigation, Department of Justice.

Opponents: **Mike Barrett, Helena, EXHIBIT(juh37a03)**

Questions from Committee Members and Responses: **Reps. Peterson, Harris, Eggers, Hurdle, Noennig, Clark, Adams to Mr. Batista, Mr. Thaggart, Mr. Hutchison, Rep. Jent with concerns and for clarification.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.6}
{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 30.1}

Closing by Sponsor: **Rep. Jent closed the Hearing on HB 261 by explaining proposed amendments.** He said this is a Bill that responds to the times of drug law enforcement in Montana.

HEARING ON HB 545 AND HB 546

Sponsor: **Rep. Dave Gallik, HD 52, Helena** said these two Bills are modifications to family law sections of the Code. HB 545 does one thing, basically and that is to provide a modification of a final parenting plan or an amendment to a final parenting plan, that it be served and treated similar to an initial pleading, such as a petition or a complaint. Therefore, the rules of civil procedure are going to be applicable to a petition for amendment or a response to a petition for amendment of a final parenting plan. This Bill also requires that when there is a petition for amendment to a final parenting plan or a modification to a final parenting plan, that it be required to include an affidavit supporting it so that the attorney can insure that once a petition is filed, it is properly served pursuant to the rules of civil procedure and that there is supporting documentation for that in the form of an affidavit.

HB 546 also deals with the family law section and this is an amendment to Section 44-208 of the Montana Code Annotated. He proposed an amendment to strike all the language on Page 2, lines 11 through 14.

He referred to Page 1 and said what it purports to do is to provide that when there is a modification for child support, (line 18) he wants to segregate those from "child support to maintenance". The first provision would be only as a modification for child support which would be a little lesser of a standard than is currently required on line 20 of Page 1. The proposed amendment to this section would provide that a substantial change and circumstance of the child or parent be

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 15, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Jeff Mangan (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: **HB 151 - DPAA**
HB 471 - DPAA

HB 261 - DPAA
HB 250 - Table
HB 323 - Table

EXECUTIVE ACTION ON HB 250

Motion: REP. ADAMS moved that HB 250 DO PASS. #1

Motion/Vote: REP. SHOCKLEY moved that HB 250 BE AMENDED. #2 Motion carried 15-4 with Reps. Gutsche, Harris, Hurdle and Newman voting no. EXHIBIT(juh38a01)

Discussion: Reps. Shockley, Noennig; without objection Rep. Balyeat; Hurdle, Newman, Peterson.

Motion: REP. ADAMS moved that HB 250 DO PASS AS AMENDED. #3

Discussion: Reps. Rice, Clark, Laszloffy, Hurdle, Gallus, Newman, Noennig, Harris, Peterson; without objection Rep. Balyeat.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.6}

Motion: REP. PETERSON moved that HB 250 BE AMENDED. #4 "The equality of education opportunity shall be measured solely by the results of educational programs rather than the amounts, structure or nature of the resources employed".

Substitute Motion/Vote: REP. NOENNIG made a substitute motion that HB 250 BE AMENDED. #5 Motion failed 7-13 with Reps. Laszloffy, Clark, Adams, Clancy, Curtiss, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan, Newman and Thomas voting no.

Discussion: Reps. Clark, Peterson.

Vote: Motion #4, Peterson amendment, carried 12-8 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan and Newman voting no.

Motion: REP. YOUNKIN moved that HB 250 DO PASS AS AMENDED. #6

Motion/Vote: REP. YOUNKIN moved that HB 250 BE AMENDED to strike the words "free from harassment by courts and attorneys", line 28. #7 Motion carried 14-5 with Reps. Clark, Gutsche, Harris, Hurdle and Newman voting no.

Motion/Vote: REP. ADAMS moved that HB 250 DO PASS AS AMENDED. #8

EXECUTIVE ACTION ON HB 229

Motion: REP. PETERSON moved that **HB 229 BE TAKEN OFF THE TABLE.** #21

{Tape : 3; Side : A; Approx. Time Counter : 2.3 - 29.4}

Discussion: Rep. Peterson

Vote: Motion #21 failed 5-15 with Reps. Shockley, Laszloffy, Clark, Adams, Clancy, Curtiss, Eggers, Gallus, Gutsche, Harris, Hurdle, Noennig, Rice, Thomas and Wolery voting no.

EXECUTIVE ACTION ON HB 261

Motion: REP. NEWMAN moved that **HB 261 DO PASS.** #22

Motion: REP. NEWMAN moved that **HB 261 BE AMENDED.** #23 EXHIBIT(juh38a05)

Discussion: Rep. Newman explained the amendments. Rep. Noennig to Mr. MacMaster for further explanation. Reps. Harris, Youmans, Clark.

Vote: Newman amendments #23 carried 19-1 with Rep. Gutsche voting no.

Motion: REP. NOENNIG moved that **HB 261 DO PASS AS AMENDED.** #24

Motion: REP. CLARK moved that **HB 261 BE AMENDED to strike Sub 3, Page 1, line 29 and Sub 5, lines 12 thru 16 on Page 2, Page 3, line 6 to change "create a substantial risk of death or serious bodily injury to another".** #25

Discussion: Reps. Clark, Noennig, Newman, Harris.

Vote: Motion #25, Clark amendments carried 17-2 with Reps. Gutsche and Mangan voting no.

Motion: REP. NOENNIG moved that **HB 261 DO PASS AS AMENDED.** #26

Discussion: Rep. Gutsche.

Vote: Motion #26 carried 17-2 with Reps. Gutsche and Hurdle voting no.

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 21}

ADJOURNMENT

Adjournment: 11:10 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT(juh38aad)

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 16, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary -

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 214, HB 261, HB 603, HB 570, 3/13/2001
Executive Action: HB 560, HB 266

HEARING ON HB 214

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **Karla Gray, Chief Justice, MT. Supreme Court**
Ken Neil, District Judge, Great Falls
Larry Johnson, Attorney, Hamilton
John Greef, President Ravalli County Bar Association

CHAIRMAN GROSFIELD asked if this bill would be within the budget or not. **REP. SHOCKLEY** answered the Appropriations Committee said yes, it would be within the budget.

Closing by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, summarized the need for this bill and stated this bill offers the rights of the people and should be considered for the public. He asked for a do concur motion and support from the committee.

HEARING ON HB 261

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **Joe Faggard, Assistant Attorney General, MT. Dept. of Justice**
Jim Hutchinson, Forensics Toxicologist, State Crime Lab, Missoula

Opponents: **None**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, addressed the bill and explained the manufacturers of these chemicals and how the possession of equipment and lab was not illegal. He said this bill would recognize the set-tup of production for the sale of methamphetamine and the transportation of the drugs and incur penalties. He told the committee how labs could start fires, blow up and endanger the lives involved. He explained the language of enhancement dealing with the penalties for criminal acts. Methamphetamine producers and dealers would sometimes booby trap labs so they would not be caught. These dealers were at risk and put others at risk.

{Tape 2; Side A}

Proponents' Testimony:

Joe Faggard, Assistant Attorney General, MT. Dept. of Justice, said this bill provides increased penalties for people involved with making these drugs and transporting labs. He felt children involved within these homes were in danger. He pointed out how this bill would save time and money for the state.

Jim Hutchinson, Forensics Toxicologist, State Crime Lab, Missoula, stated it had become easy for people to go on the internet or the local store to purchase the chemicals used for these drugs. The toxic chemicals were explosive and very dangerous around the lives of young children and the people involved with making methamphetamines. He pointed out the increase in number of clandestine laboratories over the past couple of years.

Opponents' Testimony: None

Questions from Committee Members and Responses:
SEN. GRIMES referred to page two and asked about the language change. **REP. JENT** said they did not want to criminalize glass-wear and he defined the possession intent.

SEN. GRIMES asked how they proved the possession of chemicals were purposefully and knowingly for the production and manufacturing of dangerous goods. **REP. JENT** said once the chemicals were found they also looked for the glass-wear used. He said they need to look for the flow of money and search where the chemicals had come from.

SEN. GRIMES asked if the sponsor was comfortable with the language of the bill. **REP. JENT** said yes, he was comfortable with the language.

SEN. O'NEIL explained the situation of a person who lived in an apartment complex where drugs were being made in another apartment. He asked if this bill would help get money out of the person making the drugs. **REP. JENT** said the district judge would order a restitution and would be able to charge the person with criminal mischief for damaging the property.

SEN. AL BISHOP asked if a person could have the precursors to making drugs, but use them for something else. **REP. JENT** said he wouldn't know why someone would have precursors to making methamphetamine drugs with an innocent purpose.

SEN. BISHOP asked if having those chemicals in one's possession wouldn't make them a criminal. **REP. JENT** said no, it would not.

SEN. BISHOP referred to bottom of page two and asked what a laboratory location was. **REP. JENT** explained how people use locations other than their living place to set up a lab. He said the locations were used by the criminals to store their chemicals at.

SEN. BISHOP asked if by renting an apartment and someone used it as a laboratory, could they be convicted under this section. **REP. JENT** said technically yes. He thought it would be hard to prove the case unless the trail was followed.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, summarized the need of the bill and enforcing penalties for people making methamphetamines in a laboratory setting. He felt this bill would save money for the state and tools to bust laboratories would be the only expense needed. He urged a do concur motion for this bill.

HEARING ON HB 603

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **Chris Tweeten, Chief Counsel Attorney Generals Office**

Opponents: **None**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, stated this bill authorizes any state agency that litigated in an appellate court would have to inform the attorney general. He said if someone was to litigate they should confer with the attorney general, however the attorney general did not control all of the appellate litigation of the state.

Proponents' Testimony:

Chris Tweeten, Chief Counsel Attorney Generals Office, explained the notification to the attorney general and clarified the relationship between the attorney general and various agency attorneys in the state who handled appellate litigation. He mentioned the existing law was expanded requiring the attorney general to be notified when an appeal was taking place in a state court.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked if the change required for the departments to notify the attorney general before taking up an appeal. **REP.**

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 2001 at 8:15 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch
Jodi Pauley, Transcriptionist

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 195, HB 208, HB 219, HB 254, HB 208, HB 261, HB 359, HB 521, HB 563, HJ 17, HB 496, HB 290, HB 570, HB 182

EXECUTIVE ACTION ON HB 195

Motion: **SEN. RIC HOLDEN moved HB 195 BE CONCURRED IN.**

Discussion:

SEN. O'NEIL said he did not like the amendments due to the judge allowing whatever he wanted and the reason for this bill was to add control with the issue.

SEN. GRIMES referred to page three and added somebody would have the right to defend themselves when they were in contempt of court. The amendments stated there would be a limit on this.

Motion/Vote: SEN. HALLIGAN moved the amendments HB020801.avl. Motion carried unanimously.

Motion/Vote: SEN. HALLIGAN moved HB 208 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused.

{Tape 2; Side A}

EXECUTIVE ACTION ON HB 261

Motion: SEN. HALLIGAN moved HB 261 BE CONCURRED IN.

Discussion:

SEN. O'NEIL discussed an amendment HB026101.avl **EXHIBIT(jus66a03)**.

SEN. GRIMES said, "purposely and knowingly," was clear language and it may create a loophole.

SEN. HALLIGAN said the bill was trying to tie everything into one unlawful act and it was already clear. He added a prosecutor couldn't prosecute without the connection to dangerous drugs.

SEN. O'NEIL referred to Section(D) and felt there needed to be more work done on the amendment. He offered an incident when he worked in a hardware store.

SEN. GRIMES said it does say precursors to dangerous drugs. **SEN. O'NEIL** said it related to those chemicals and within Section(D) a person could be guilty if they were selling dangerous drugs.

SEN. HALLIGAN said it would be better to strike Section(D). **SEN. O'NEIL** said he didn't think they should strike it because they want to make it illegal for somebody to sell chemicals that they know would be used for dangerous drugs.

SEN. HALLIGAN said there were lots of people selling the precursors to these dangerous drugs and they don' t know what the

buyers were going to be using them for and the language was fairly broad.

Motion/Vote: **SEN. O'NEIL made a motion to strike Subsection(d) in its entirety. Motion carried 7-1 with SEN. GRIMES voting no.**

Motion/Vote: **SEN. DOHERTY moved HB 261 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused**

EXECUTIVE ACTION ON HB 359

Motion: **SEN. HALLIGAN moved BE AMENDED HB035901.avl EXHIBIT(jus66a04).**

Discussion:

SEN. HALLIGAN explained the amendments.

SEN. GRIMES referred to the amendments and asked if this applied to children who hadn't been tried as an adult or would it apply to all. **SEN. HALLIGAN** answered only if they hadn't been tried as an adult.

SEN. O'NEIL asked if this would include a situation where a juvenile stole a car when he is 16 and if his DNA was on record forever. **SEN. HALLIGAN** explained this was a discretionary offense that could eventually end up in adult court, and he didn't know of any prosecutor who would bring a juvenile into adult court for car theft.

SEN. O'NEIL asked if this would only apply if the juvenile were tried as an adult. **SEN. HALLIGAN** answered yes.

Vote: **Motion carried unanimously.**

Motion: **SEN. DOHERTY moved HB 359 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HOLDEN asked if an applicability clause was included in the amendments. **SEN. HALLIGAN** answered no, it was not.

SEN. HOLDEN referred to page two and wondered about the discussion that DNA would not be kept on file once the offender reached the age of majority. **Valencia Lane** said they treated youths differently as they were tried in juvenile court and they